

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
BILL R. MEYER and  
JOHN L. FORD,

Appellants,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY and  
THREE LAKES WATER DISTRICT,

Respondents.

PCHB No. 81-31

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a report of examination and permit issuance on a ground water application of the Three Lakes Water District, came on for formal hearing before the Pollution Control Hearings Board; Nat W. Washington, Chairman and Presiding Officer, and Gayle Rothrock, Board member, on June 3, 1981, in Wenatchee. Court reporter Louann Nelson recorded the proceedings.

The appellants appeared and represented themselves; Wick Dufford, assistant attorney general, appeared and represented the Department of

1 Ecology; and Joseph Woolett, observed the proceedings as the  
2 representative for the Three Lakes Water District.

3 On motion of the Department of Ecology and with the concurrence of  
4 appellants and Three Lakes Water District, the Board on August 21,  
5 1981, granted a re-opening of the formal hearing to hear additional  
6 testimony and provide for cross-examination. Chairman Washington  
7 withdrew from the case, out of concern for a possible conflict of  
8 interest. The hearing re-opened on August 31, 1981, in Cle Elum,  
9 Washington; Gayle Rothrock, presiding and David Akana, Board member,  
10 together sitting for and as the Board.

11 Appellants appeared and were represented by David J. Whitmore,  
12 respondent Three Lakes Water District appeared and was represented by  
13 Craig Nelson, respondent Department of Ecology was again represented  
14 by Wick Dufford. Court reporter Linda S. Hale recorded the  
15 proceedings.

16 Witnesses were sworn and testified. Exhibits were admitted.  
17 Appellant's and the State's counsel made arguments.

18 Having heard the testimony; having examined the exhibits; having  
19 considered the contentions of the parties at both hearings; and having  
20 issued a Proposed Order to which exceptions were received and  
21 reviewed, and, in some cases, incorporated; the Board makes these

## 22 FINDINGS OF FACT

### 23 I

24 Appellants, Bill R. Meyer and John Ford, reside, own property, and  
25 make their respective livings as orchardists near Malaga in Chelan

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
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1 County, Washington. Each holds either water right claims or  
2 certificates for ground water under their properties which came to  
3 them through purchase and acquiring title to the lands they now  
4 cultivate.

5 Three Lakes Water District was organized to serve Three Lakes  
6 Country Club Estates, located near Malaga; a development of 335 lots  
7 and home sites with close to 60 homes currently built and occupied.

## 8 II

9 The land in the subject area (260' above the Rock Island Pool of  
10 the Columbia River) is dotted with hummocks, hills and  
11 valley-depressions, at least two lakes (Meadow and Cortez); and is  
12 composed of clay, silt, gravel, and basalt boulders. The topographic  
13 shape probably stems from an old landslide off Jumpoff Ridge.

## 14 III

15 The area has both natural and artificially stored ground water and  
16 irrigation is commonplace in the area. Meadow Lake is an artificial  
17 lake and reservoir constructed, maintained, and operated by Galler  
18 Ditch Company for irrigation purposes. Water from Stemilt Creek has  
19 been diverted to Cortez Lake, also primarily an irrigation reservoir.  
20 There are significant seasonal fluctuations in the water levels of  
21 Meadow and Cortez Lakes and in the wells in the area. There is a  
22 hydrologic relationship, whose characteristics are not yet fully  
23 determined, amongst the lakes and the area wells. It is clear the  
24 seasonal levels of reservoirs and the ground water table in the area  
25 vary directly. The static levels of water have not declined over the  
26 last 30 years.

IV

In September of 1977 Three Lakes Water District filed an application (No. G4-25504) with the State Department of Ecology to withdraw 200 gallons per minute (GPM) from a well for community domestic supply. In March of 1978 the Water District requested the withdrawal rate be changed to 400 GPM. Messrs. Meyer and Ford both filed objections to the Water District's request on the grounds the proposed withdrawal would adversely affect the rights of nearby appropriators of water from springs and wells.

V

Three Lakes Water District holds Ground Water Certificate 6009 which allows a withdrawal of 200 GPM from the older of the two wells which are the subjects of its application. The annual quantity authorized for appropriation is 143 acre feet per year. In May of 1978 the Department of Ecology issued a Certificate of Change authorizing the Water District to add a point of withdrawal, a new well 100 feet SE of the old one, and change the place of use within Sections 29 and 30 of Township 22 North, Range 21 E.W.M. The new well is in full operation now. The old well is just to be used as a standby in the event of a pump failure in the new well. The actual withdrawal capacity of the new well is over 400 GPM.

VI

The standard annual water requirement for a fully developed sub-division of 355 lots and homesites, whose population of residents is 1000, is 224 acre feet per year. The Department of Ecology makes

1 it a practice not to grant permitted withdrawals in excess of annual  
2 acre-feet standards.

3 VII

4 Billie R. Meyer holds Ground Water Certificate 545-D (which flows  
5 from Declaration of Ground Water Claim 404) authorizing withdrawal of  
6 450 GPM for irrigation of 50 acres at a well site approximately 300  
7 feet south of the new well of Three Lakes Water District. Mr. Meyer  
8 also utilizes water from other wells and springs (through ground water  
9 claims) for irrigation and domestic supply purposes. John "Tex" Ford  
10 owns two wells, whose water he uses for irrigation purposes and  
11 limited domestic supply, and which are located approximately one-half  
12 mile east of the Three Lakes Water District's newer well.

13 VIII

14 B. R. Meyer had difficulty obtaining his permitted withdrawal of  
15 water from his certificated 545-D well during the mid and late summer  
16 of 1981 and at other times. Other residents and cultivators in the  
17 area, including John Ford, have had periodic difficulty obtaining  
18 needed water from their wells at least since the summer of 1978.

19 IX

20 Having adequate water available for fruit and other crops in  
21 summertime sustains growth, provides for a viable harvest, and  
22 minimizes the possibility of severe economic loss.

23 In the case of ground water pumped and distributed to nurture  
24 crops, having wells; a) in sound condition with good casings, b) dug  
25 deep enough and c) equipped and managed for adequate pump lift insures

1 that whatever water is available and permitted for withdrawal will be  
2 available to the trees and crops.

3 X

4 The Pollution Control Hearings Board takes official notice of  
5 Department of Ecology Orders No. 81-532, No. 81-533, and No. 81-534  
6 which were issued in August, 1981, to require well monitoring in the  
7 subject area, which orders are in force, and which pertain to matters  
8 before the Board in this case.

9 XI

10 Any Conclusion of Law which should be deemed a Finding of Fact is  
11 hereby adopted as such.

12 From these Findings the Board comes to these

13 CONCLUSIONS OF LAW

14 I

15 State law requires the Department of Ecology to make four  
16 determinations prior to the issuance of a water use permit: a) what  
17 water, if any, is available; b) to what beneficial uses is the water  
18 to be applied; c) will the appropriation impair existing rights; and  
19 will the appropriation detrimentally affect the public welfare.  
20 RCW 90.03.290. Stemple v. Department of Water Resources, 82 Wn2d 109,  
21 115 (1973). In addition, RCW 90.44.070 provides that no permit shall  
22 be granted for the withdrawal of public ground water beyond the  
23 capacity of the aquifer to yield such water within a reasonable or  
24 feasible pumping lift.

1 II

2 Water is here (a) available for appropriation for the  
3 (b) beneficial use of community or single domestic supply or for  
4 irrigation purposes. Under state law the Department of Ecology has  
5 the authority to allocate available water among potential uses and  
6 users based on securing the greatest benefit to the people of the  
7 state. RCW 90.54.020. WAC 173-500.

8 III

9 Three Lakes District filed for, amended and, finally, obtained a  
10 permitted withdrawal of ground water from the State Department of  
11 Ecology under G4-25504 resulting in a grant of 200 GPM and up to 83  
12 acre feet per year. RCW 90.44. Since accuracy in adhering to water  
13 use standards governs departmental actions, the Board concludes the 83  
14 acre feet per year is a simple mathematical error and should be  
15 corrected to 81 acre feet per year.<sup>1</sup>

16 IV

17 Economical and efficient pumping and use of water under terms of  
18 the certificates, claims and permitted withdrawals of B. R. Meyer, J.  
19 L. Ford and Three Lakes Water District does not appear to interfere  
20 with prior rights of appropriators (others and between themselves),  
21 given existing knowledge about ground water in the area. The evidence  
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23 1. With a total projected use demand of 400 GPM, not to exceed 224  
24 acre feet per year, and an existing certificate (No. 6009) allocating  
25 200 GPM, and up to 143 acre feet per year, only 81 acre feet per year  
26 additional needs be allowed under current standards.

1 does not show that the instant appropriation would cause the  
2 withdrawal of public ground water beyond the capacity of the aquifer,  
3 as it is known, to yield such water within a reasonable or feasible  
4 pumping lift. However, scientific investigations and monitoring data  
5 on the subject wells, and on other wells and waterbodies in the area,  
6 could yield new information on use patterns, aquifer(s), and water  
7 recharge which would cast a new light on potential interference with  
8 prior rights. RCW 90.03; 90.44; and 90.54.

9 V

10 Monitoring data gathered under terms of DE Orders 81-532, 81-533  
11 and 81-534, and any other information on groundwater performance  
12 collected while these orders are active, should be rigorously reviewed  
13 by the Department of Ecology. This should be the basis for further  
14 regulatory or certification action, if such action is necessary, so  
15 that rights are protected and waste is prevented under terms of state  
16 laws and regulations. RCW 90.44.250 and 43.27A.190; Simpson v. DOE,  
17 PCHB No. 846. In this regard, where ground water is consumed in an  
18 amount grossly out of proportion to the actual expected use, DOE  
19 should be on notice to investigate and, if necessary, regulate against  
20 the willful or negligent waste of water.

21 VI

22 Any Finding of Fact which should be deemed a Conclusion of Law is  
23 hereby adopted as such

24 From these Conclusions the Board enters this



ORDER

The Department of Ecology order activating a permit issuance under Ground Water Application G4-25504 is affirmed; provided the mathematical error is corrected to 81 acre feet per year and the permit is conditioned to require (a) recording of the cumulative quantity of water pumped each month; (b) at least monthly measurement of the water level in the active well; (c) submission of this flow meter-recorded data to the Central Region Office of the State Department of Ecology at least quarterly; (d) annually an exact description of the manner and extent of the beneficial use of water withdrawn be sent to the Department, with the first submission being January 15, 1982. Nothing in this order shall be construed to require inclusion of these conditions in the issuance of a final water right certificate.

DONE this 9<sup>th</sup> day of April, 1982.

POLLUTION CONTROL HEARINGS BOARD

Gayle Rothrock  
GAYLE ROTHROCK, Vice Chairman

David Akana  
DAVID AKANA, Lawyer Member